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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,122	08/20/2003	Robert Mark Zerhusen	8266-1126	6524
7590 06/09/2005			EXAMINER	
Intellectual Property Group Bose McKinney & Evans LLP 2700 First Indiana Plaza 135 North Pennsylvania Street Indianapolis, IN 46204			LEE, JONG SUK	
			ART UNIT	PAPER NUMBER
			3673	
DATE MAILED: 06/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,122

Applicant(s)

ZERHUSEN ET AL

Examiner

Jong-Suk (James) Lee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 16,17 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15,18-25 and 27-29 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed May 3, 2005 has been entered.
2. Upon further search and consideration, allowable subject matter indicated in the previous office action mailed on February 3, 2005 has been withdrawn in view of the newly found reference to US 6,038,721. Therefore, the new ground of rejection based on the newly found reference is as follows.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-15 and 18-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claims 1-15 and 18-25: The claims are not clarified which is the inventive features, for example, regarding claim 1, the siderail covering has a flexible body having a plurality of notches and a central-siderail receiving apertures adapted to receive a rail member therein. However, in claim 11, the siderail includes a flexible body including a flexible material having a plurality of laterally extending apertures and a rail member positioned at least partially inside the flexible body.

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Therefore, it is not clear as to which part is provided with the flexible body with apertures or notches and the rail member therewithin, the siderail or the siderail covering?

Re claims 2, 3 and 5: The limitation, "further comprising a central siderail-receiving aperture adapted to receive a rail member therein" in claim 2, lines 1-2; "further comprising a slot extending....to the central siderail-receiving aperture" in claim 3, lines 1-2 and "further comprising a longitudinal axis, wherein the body flexes...with the longitudinal axis of the siderail covering" in claim 5, lines 1-3, respectively, renders the claim indefinite because it is not clear as to which part of the patient support is related to the aforementioned claim limitations. For example, it is suggested to be -- wherein the siderail covering further comprising.... --.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-15 and 18-25, as understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Fattore (IUS 4,767,419).

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Fattore discloses a protective pad for a pair of siderails, each with siderail covering, the siderail or siderail covering, as understood, comprising a flexible body (48), which is made of polyurethane foam, having a plurality of laterally extending notches or apertures (38) dividing the body with a plurality of segments, a central siderail-receiving aperture for receiving a rail member (56, 58) therein (see Fig. 3), the rail member being flexible (see col.2, lines 63-67), and the flexible body having a first longitudinal end, a second longitudinal end, a body centerline extending within the body between the first longitudinal end and the second longitudinal end, the body having a first position in which the body centerline is straight, and the body having a second position in which the body centerline is inherently curved when the patient is holding the siderail (see Figs. 1-6; col.2, lines 16-68; col.3, lines 1-43).

Although Fattore is silent with respect to the patient support face or hospital bed siderail, it is believed to be inherent to have such a baby crib for a baby patient in a hospital.

7. Claim 15, as understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Application (JP 10-266510).

The preamble limitation, “for use with a hospital bed” in line 2 is an intended use and patentable weight is not given to the preamble.

Japanese Patent Application’510 discloses a flexible side/hand rail for a step comprising a support surface/wall, a side rail including a siderail covering having a flexible body (2A2) including a flexible material having a plurality of laterally extending apertures/notches and having a central rail member aperture wherein an articulated rail member (2A1) positioned inside the flexible body through the central rail member aperture, the flexible body having a

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plurality of repeating segments along a longitudinal axis of the body, each repeating segment is pivotable relative to adjacent repeating segments as depicted in Fig. 5 (see Figs. 1-7; English translated abstract).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 6,038,721) in view of Pierzina (US 6,279,795).

Gordon discloses a split rail bed guard system comprising of an articulating deck including a first deck section (10) and a second deck section (16) able to be articulated relative to the first deck section; a first guiderail portion (12) coupled to the first deck section (10); a second siderail portion (22) coupled to the second deck section (16); and a siderail covering/flap (24) coupled to the first siderail portion and the second siderail portion (see Figs. 1-6; col.4, lines 3-67; col.5, lines 1-47).

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However, Gordon fails to disclose or fairly suggest the siderail covering having a plurality of triangular apertures being adjustable with the articulation of the first and second sections of the siderail portion.

Pierzina discloses a shoulder strap comprising of a body of padding material (26) having a plurality of triangular shaped apertures (34) (see Fig. 5) and being adjustable to the articulation/manipulation of the padding material according to the shoulder shapes or modified to be hand carried (see Fig. 6) (see col.2, lines 32-67; col.3, lines 1-35).

Therefore, in view of Pierzina, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to replace the side rail covering/flap of Gordon with the pad in order to efficiently couple the first and second siderail sections with enhancing the foldability and flexibility for the articulation of the siderail sections.

Response to Arguments

10. Applicant's arguments with respect to claims 1, 7, 10, 11, 18 and 21 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the preamble limitation, "A pair of siderails for use with a hospital bed" in amended claim 15, patentable weight is not given to the preamble insofar as the preamble, "a hospital bed" is not positively recited in the body of the claim.

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Allowable Subject Matter

11. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

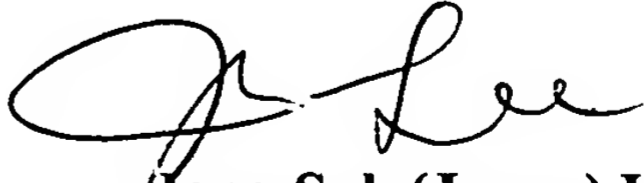
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other references cited disclose a inflatable bed rail guard, a device for protecting occupant of infant's crib and a safety device for beds with side rails.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jong-Suk (James) Lee whose telephone number is (571) 272-7044. The examiner can normally be reached on 6:30 am to 3:00 pm, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford, can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Lee /jjl
June 6, 2005


Jong-Suk (James) Lee
Primary Examiner
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